ATTORNEYS FOR APPELLANT:

**ROBERT H. LITTLE**
**REBECCA A. TRENT**
Brookston, Indiana

ATTORNEY FOR APPELLEE:

**RICHARD O. BOVEY**
Lafayette, Indiana

# IN THE
# COURT OF APPEALS OF INDIANA

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| LINDA K. BOONE, | ) | |
| | ) | |
| Appellant-Respondent, | ) | |
| | ) | |
| vs. | ) | No. 08A02-0601-CV-33 |
| | ) | |
| DANIEL R. BOONE, SR., | ) | |
| | ) | |
| Appellee-Petitioner. | ) | |

APPEAL FROM THE CARROLL CIRCUIT COURT
The Honorable Donald E. Currie, Judge
Cause No. 08C01-0304-DR-35

**November 15, 2006**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**SHARPNACK, Judge**

Linda Boone ("Wife") appeals the trial court's dissolution of her marriage to Daniel Boone, Sr. ("Husband"). Wife raises six issues, which we revise and restate as:

I. Whether the trial court abused its discretion in dividing the marital assets and debts;

II. Whether the trial court erred by ordering Wife to vacate the property by July 15, 2005;

III. Whether the trial court erred by finding that Wife possessed Husband's diamond ring and tools;

IV. Whether the trial court abused its discretion by ordering Wife's daughter to vacate the property; and

V. Whether the trial court erred by ordering that Wife's maiden name be restored.

We affirm in part, reverse in part, and remand.

The relevant facts follow. Husband and Wife were married on April 13, 1990, and they had no children. Husband had a trenching business, and Wife worked as the bookkeeper for the business. Husband and Wife owned nine acres of land that had a number of trailer homes on the property.

In April 2002, Husband and Wife separated. Wife continued to live in the family residence with her grandchildren. On April 30, 2002, Husband was arrested for drug possession based on information provided by Wife. Husband lost some of his corporate customers due to his arrest and incarceration.

On July 31, 2002, Husband and Wife entered into a quitclaim deed for the real estate, which stated that "Husband and Wife . . . Quitclaim and release to [Wife] . . . in consideration of One Dollar ($1.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the following described real estate." Husband's Exhibit 3. Husband signed the quitclaim deed because Wife promised that she would not sell the property and would hold it in trust for him.

In March 2003, Wife attempted to evict Husband from the real estate. On April 2, 2003, the Carroll Superior Court entered an order, which stated in part:

* * * * *

> 2. To "protect" real estate from liens or claims of the State of Indiana and federal claims related to taxes, title to certain real estate was transferred to [Wife] by [Husband] without consideration. There was an oral agreement between the parties regarding the continued possession of the real estate by the defendant, the obligations of the parties in maintaining the real estate, and the reconveyance of the real estate. From the evidence presented, the court is unable to determine the exact terms of the agreement.
> 3. The action before the court appears to be equitable in nature and beyond the jurisdiction of small claims.
>
> The court finds for the defendant.

Husband's Exhibit 4. At some point, Wife listed for sale 1.35 acres of the nine acres, which included the trailer then occupied by Husband. Wife accepted an offer that was dated April 12, 2003, but the offeror failed to secure financing and the closing did not occur.

On March 22, 2003, a fire occurred at the marital residence. As a result, the insurance company paid $58,566.

On April 24, 2003, Husband filed a petition for dissolution of marriage and an amended petition on November 18, 2003. On May 23, 2005, the trial court held a hearing on Husband's petition. On June 4, 2005, Husband and Husband's friend, Bruce Walters, went to the property to retrieve an item from the pole barn, and Jessica Guerrero, Wife's daughter from a previous marriage, shot at Husband and Walters. On June 17, 2005, Wife filed a verified petition for a restraining order requesting that the trial court restrain Husband from coming onto the real estate at any time until the divorce was finalized.[1] On June 20, 2005, Husband filed a verified petition for a restraining order "against [Wife] and her adult daughter from a prior marriage, Jessica Guerrero." Appellee's Appendix at 25. On June 24, 2005, the trial court held a hearing on both motions and took the matter under advisement.[2] On September 30, 2005, the trial court entered the final decree of dissolution and order distributing marital assets and debts. Portions of the trial court's twenty-two page order will be set out to resolve issues as necessary.

The trial court here entered findings of fact and conclusions thereon sua sponte. "Sua sponte findings control only as to the issues they cover and a general judgment will control as to the issues upon which there are no findings." Yanoff v. Muncy, 688 N.E.2d

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[1] A copy of Wife's petition is not included in Appellant's Appendix.

[2] The record does not reveal whether the trial court ruled on these motions.

1259, 1262 (Ind. 1997). We will affirm a general judgment entered with findings if it can be sustained on any legal theory supported by the evidence. Id. When a trial court has made findings of fact, we review sufficiency of the evidence using a two-step process. First, we determine whether the evidence supports the trial court's findings of fact; second, we determine whether those findings of fact support the trial court's conclusions thereon. Id. We will set aside findings only if they are clearly erroneous. Id. "Findings are clearly erroneous only when the record contains no facts to support them either directly or by inference." Id. A judgment is clearly erroneous if it applies the wrong legal standard to properly found facts. Id. In order to determine that a finding or conclusion is clearly erroneous, our review of the evidence must leave us with the firm conviction that a mistake has been made. Id.

I.

The first issue is whether the trial court abused its discretion in dividing the marital assets and debts. The division of marital assets lies within the sound discretion of the trial court, and we will reverse only for an abuse of discretion. Woods v. Woods, 788 N.E.2d 897, 900 (Ind. Ct. App. 2003). "When a party challenges the trial court's division of marital property, he must overcome a strong presumption that the court considered and complied with the applicable statute, and that presumption is one of the strongest presumptions applicable to our consideration on appeal." Id. We may not reweigh the evidence or assess the credibility of witnesses, and we will consider only the evidence most favorable to the trial court's disposition of the marital property. Id. Although the

facts and reasonable inferences might allow for a different conclusion, we will not substitute our judgment for that of the trial court. Id. Further, the trial court's disposition is to be considered as a whole, not item by item. Fobar v. Vonderahe, 771 N.E.2d 57, 58 (Ind. 2002).

Ind. Code § 31-15-7-5 (2004), which governs the distribution of marital property, provides that:

> The court shall presume that an equal division of the marital property between the parties is just and reasonable. However, this presumption may be rebutted by a party who presents relevant evidence, including evidence concerning the following factors, that an equal division would not be just and reasonable:
>
> (1) The contribution of each spouse to the acquisition of the property, regardless of whether the contribution was income producing.
> (2) The extent to which the property was acquired by each spouse:
>  (A) before the marriage; or
>  (B) through inheritance or gift.
> (3) The economic circumstances of each spouse at the time the disposition of the property is to become effective, including the desirability of awarding the family residence or the right to dwell in the family residence for such periods as the court considers just to the spouse having custody of any children.
> (4) The conduct of the parties during the marriage as related to the disposition or dissipation of their property.
> (5) The earnings or earning ability of the parties as related to:
>  (A) a final division of property; and
>  (B) a final determination of the property rights of the parties.

Wife argues that the trial court erred in dividing the assets by: (A) improperly dividing personal property after the fire; (B) ordering that the insurance proceeds be used to pay Husband's 2001 tax liabilities; (C) failing to credit Wife for her efforts in negotiating with the insurance company; (D) finding that Wife held title to the real estate

and other property in a constructive trust; (E) valuing the real estate; (F) determining Wife's income; (G) relying on the fact that Wife reported Husband's criminal activity; (H) finding that Wife stole $20,000; (I) finding that Wife requested separate returns; (J) finding that Wife engaged in a scheme; (K) finding that Wife finagled a quitclaim deed; (L) finding that Wife was a financial manager; (M) considering the circumstances surrounding the shooting; and (N) finding that Wife should receive the cash proceeds from refinancing the mortgage. In reviewing her assertions, we are mindful of Indiana Trial Rule 61, which provides in part that no error, including a defect in a ruling, is grounds for reversal on appeal, "unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties."

A. Post-Separation Fire

Wife argues that the trial court did not properly account for the consequences of the post-separation fire and destruction of the marital residence. The trial court's order stated, in pertinent part:

> 11. The insurance company had sent prescribed inventory loss forms to the Wife to be properly filled out, completed and signed with respect to the loss of their personal property and contents as a result of the March 22, 2003 fire. The Wife admitted in her testimony that she never furnished her Husband with a copy of said insurance company inventory proof of loss form so he could properly fill it out, date and sign it while incarcerated at the Carroll County jail. The Husband attempted while incarcerated to provide the Wife with a written list of all personal property totaling over $35,000.00 lost in the March

> 22, 2003 fire but she refused to accept it. She wanted to wrongfully claim all of the remaining $55,000.00 insurance proceeds for herself which ran totally contrary to the terms of the policy and was also contrary to the terms of the parties' trust agreement when the Husband signed a Quit Claim Deed to the Wife as his 'Trustee'.
>
> 12. On November 3, 2003, Meridian deposited a total of $55,000.00 with the Clerk of this Court. . . . On January 6, 2004 the parties agreed to a disbursement of $10,000.00 each from their insurance proceeds to be made by the Clerk of the Carroll County Circuit Court. . . . The Clerk holds the remaining $35,000.00 in the parties' insurance monies.
>
> * * * * *
>
> The Husband's 2001 unpaid Federal and State income taxes, including interest and late penalties, shall be first paid out of the $35,000 in funds held by the Clerk of Carroll Circuit Court (approximately $15,000 to be paid to IRS and $2,000 to the Indiana Department of Revenue plus interest and penalties). The remaining funds, if any, after payment of said taxes shall be equally divided between the Husband and Wife.

Appellant's Appendix at 12, 24.

Wife argues that "the parties effectively divided the marital personal property at separation, and that it was essentially her property that remained in the house until the fire." Appellant's Brief at 11. Wife also argues that "$10,000 more than adequately compensated the Husband for any unidentified personal property that he may have left behind." Id. Husband argues that most of the personal property listed by the Wife was purchased prior to the parties' separation and that the Husband testified that at the time of the parties' separation, he only received an old bed from the pole barn and some older discarded items of furniture left behind by people from the rentals. An examination of

Wife's list reveals a thirty-two page list of personal property, many of which items had been purchased prior to the parties' separation. Moreover, Wife does not challenge the trial court's finding that she:

> admitted in her testimony that she never furnished her Husband with a copy of said insurance company inventory proof of loss form so he could properly fill it out, date and sign it while incarcerated at the Carroll County jail. The Husband attempted while incarcerated to provide the Wife with a written list of all personal property totaling over $35,000.00 lost in the March 22, 2003 fire but she refused to accept it.

Appellant's Appendix at 12. Under the circumstances, we cannot say that trial court clearly erred by equally dividing the remaining funds.[3]

B. Fire Insurance Proceeds to Pay Husband's Tax Liabilities

Wife argues that the trial court erred when it used the insurance proceeds to "first pay the Husband's 2001 tax liabilities." Appellant's Brief at 12. Wife argues, without citation to authority, that "[a]lthough an argument might be made that a tax bill incurred

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[3] Wife also argues that the trial court "erroneously sustained an objection to the Wife's attempt to introduce evidence as to the value of the grandchildren's property that was destroyed." Appellant's Brief at 11. Wife argues that the trial court can only divide marital property and "$8,405.34 of these proceeds should have been released to the Wife in her capacity as Guardian for the grandchildren before any of the rest was awarded or divided." Appellant's Brief at 11. Wife cites page 121 of her Appellant's Appendix, which contains a document labeled "INSURANCE CLAIM," "Children's Property (from Inventory)," and "WIFE'S EXHIBIT L." Appellant's Appendix at 121. However, Wife's Exhibit L that was admitted at the hearing is labeled "Mortgage, Pg.1/Description" and is not the same as the "Exhibit L" found in the Appellant's Appendix. Exhibits Table of Contents, Exhibit L. The document that appears in the Appellant's Appendix does not appear in any of Wife's exhibits admitted to the trial court. Accordingly, we conclude that Wife failed to make an offer of proof. Therefore, we cannot determine whether the trial court's ruling prejudiced Wife. See Yoon v. Yoon, 687 N.E.2d 201, 206 (Ind. Ct. App. 1997) (holding that we could not determine whether husband was prejudiced by trial court's ruling because husband failed to make an offer of proof), aff'd in relevant part, rev'd in part, 711 N.E.2d 1265 (Ind. 1999).

during the marriage should be treated as a marital obligation, and be divided accordingly, that argument would require proof that all of the income generating the tax was contributed into the marital pot for the benefit of the family." Id.

Even assuming that all of the income had to be contributed into the marital pot, we cannot say that the record does not support the finding. Wife cites the transcript for the proposition that Husband gave some of the money to the Wife, but not all of the money and that Husband kept the rest of the money. Wife appears to cite the following portions of the transcript. The following exchange occurred during cross examination of Husband:

> Q When you say a lot of, how much of that $120,000.00 did you deposit in your checking account?
>
> A Well, Linda Boone took care of 181 or $82,000.00 of it through corporate checks which was White County REMC which I don't have as a customer any more, Camden Telephone, which I don't have as a customer any more, and the only one I still do have is Carroll County REMC.
>
> Q Again, my question, Mr. Boone, was how much of the $123,000.00 that you earned in 2001 did you deposit into the checking account, and I do mean you personally?
>
> A I couldn't tell you.

Transcript of May 23, 2005 Hearing at 115. The following exchange occurred on direct examination of Wife:

> Q The 2001 income tax return showed gross receipts for this business of $123,000.00 approximately. Did you handle all that money?
>
> A No.

Q Do you have an opinion or recollection as to how much of it you would have handled?

A I know that he's had me deposit a couple of checks from PBS, a couple from REMC, and White County or Carroll County, and then there was some from White County. And what he had me do was pay whatever had to be paid and put it in his account, especially for his truck payment or trencher payment or whatever payments we had coming out for his business things, and that money went in.

Q And then who had access or authority to write on that account?

A He's the only one that wrote from that account.

Id. at 158. We cannot say that these exchanges support the proposition that the income was not contributed into the marital pot.

Wife also argues that Husband "should have been required to prove the amount of the outstanding tax liabilities prior to the Court awarding payment of the tax liability." Appellant's Brief at 12. Husband's separate 2001 federal tax return reveals that he owed $15,254 in taxes. Husband's separate 2001 state tax return reveals that he owed $1,801. Further, the following exchange occurred on direct examination of Husband:

Q And to your knowledge, what did [Wife] do with the estimated tax payment money . . .

A She evidently . . .

Q . . . of the business for 2001?

A She evidently put it in her pocket.

Transcript of May 23, 2005 Hearing at 85. Again, we must conclude that Wife has failed to meet her burden.

C. Wife's Negotiation Efforts

Wife argues that the trial court erred by finding:

> 10. The Husband was incarcerated as a result of the misdemeanor conviction in the drug possession case from June 4, 2003 through October 3, 2003. In August 2003 and because of the Husband's incarceration and loss of liberty, the parties entered into an Agreed Order filed with this Court which permitted the Wife to negotiate the settlement of the parties' fire loss claim with their insurance company, Meridian. . . . Under the terms of said Order, the insurance company's settlement proceeds on the loss of the house were to be paid directly to the mortgage lien holder, ABN Amro Mortgage Company. *Contrary to the terms of the Agreed Order, the settlement proceeds in the approximate sum of $58,566.00 for the house were not paid directly to ABN Amro but were instead sent to the Wife in August 2003 who held the insurance loss settlement payment check on the burned house for over a year.*

Appellant's Appendix at 11 (emphasis added).

Wife argues the insurance company sent her a check payable to the lender and herself, that she immediately delivered the check to her attorney and endorsed it, and that her attorney eventually negotiated with the lender to accept the check in full satisfaction of the mortgage. Wife argues that her "efforts should have been commended, not disparaged" and that the fact that "it took a year to get an agreement reflects perseverance, not fault." Appellant's Brief at 23. Moreover, Wife argues that she "assumed responsibility for and negotiated with the mortgage company to release the deficiency," that she "either saved the parties $10,000 in marital debt, or assumed the responsibility for payment of $10,000 in marital debt," and "she should receive a credit in the property division calculations reflecting this amount." Id. at 13. Again, Wife fails to

support this argument with any citation to authority and has waived this argument. See Loomis, 764 N.E.2d at 668 (holding that party waived issue by failing to cite to authority and develop their argument).

D. Constructive Trust

Wife argues that "[t]here is no evidence to support the finding of a constructive trust based upon fraud or constructive fraud." Appellant's Brief at 15. The trial court's order stated in pertinent part:

> 7. [Husband] also trusted his Wife when he subsequently signed a Quit Claim Deed to her for the entire 9+ acres of real estate with improvements known as 'Boone's Corner' on July 31, 2002. . . . The Husband testified about his signing of the Quit Claim Deed at the May 23, 2005 final hearing:
>
> > "*I signed it because I was under duress. [Wife] said she would not sell the property but she would hold it in trust for me*." [*Husband's testimony*][4]
>
> Their oral agreement at the time of that conveyance was that the Wife was to hold the property 'in trust' for Daniel's one-half (1/2) ownership interest. Instead of honoring the fiduciary obligations and terms of the trust, the Wife wrongfully and fraudulently embarked upon a course to claim the entire property for herself and then even filed an eviction action against Daniel on March 21, 2003 in Carroll County Superior Court under Cause No. 08D01-0303-SC-145 to try to wrongfully evict him from the old trailer home at 4820 West 500 North where the Husband was then living on the property. Fortunately for [Husband], The Honorable Jeffrey R. Smith, Judge of Carroll County Superior Court heard the testimony of the parties and found that the July 31, 2002 Quit Claim Deed was not an absolute conveyance and that no consideration was ever given for it by the Wife to the Husband. The Court further found that [Husband]'s conveyance was 'in trust' because of fears of a huge unpaid 2001 tax liability created by the

[4] Bracketed text appears in original.

> Wife's wrongful taking and dissipation of approximately $20,000.00 in income from the Husband's trenching business in addition to the Husband's fears of potential seizure and forfeiture of the property because of the Husband's 2002 arrest on drug possession charges brought about by the Wife's informing on him. (See Husband's Exhibit "4["], Certified copy of the Carroll Superior Court's findings, decision and judgment entered on April 8, 2003 in Linda K. Boone v. Daniel R. Boone, Sr., Cause No. 08D01-0303-SC-145).
>
> The Wife's devised scheme, actions and conduct to wrongfully dissipate monies and properties for herself amount to no less than Constructive Fraud perpetrated upon her Husband.

Appellant's Appendix at 9.

Wife argues that "[t]he parties testified that the real estate was transferred to Wife because of the Husband's pending income tax liens and criminal charges," and that she "was not responsible for either of these events," and "[i]f anyone is chargeable with fraud in this case, it ought to be the Husband." Appellant's Brief at 15. Wife admits that "the property was in the name of the Wife and is already marital property" and that she "never agreed to the contrary." Id. Wife argues that the "entire constructive fraud issue is irrelevant to the determination of a fair division of marital property" and that the trial court should have treated the property as marital property and provided for the presumptive equal division absent proof that equal division would not be just or reasonable. Id. Wife fails to argue what impact the finding of the constructive trust had on the division of the property. Thus, we cannot say that Wife was prejudiced.

E. Real Estate Valuation

Wife argues that the trial court erroneously valued the real estate. Specifically Wife argues that the trial court erred by finding that (1) the property had been "parcelized;" and (2) that the trial court's final valuation was not supported by the evidence.[5]

1. Dividing the Property into Parcels

Wife argues that the trial court erred by finding that the Wife caused the property to be divided into parcels. Wife cites Paragraph 14, in which the trial court stated:

> 14. Todd unequivocally stated that the Wife had substantially damaged value by hiring and never paying a surveyor Bill Stine for the purpose of re-parcelizing the nine (9) acres of real estate and dividing it up into only three (3) large tracts/lots without separate wells and septic tank systems for each of the old small homes and trailers scattered across three (3) large tracts. . . . He further testified that a house/trailer home cannot be legally sold and occupied without separate well and septic.
>
> The real estate appraiser, Raymond Todd, further clearly stated that his initial appraisal made back on December 31, 2003 cannot be used and/or relied upon to determine current fair market value for a number of compelling reasons, including the fact that the Wife had 'substantially' and permanently damaged the value of the parties' nine (9) acres of real estate by having it resurveyed, replatted and

[5] Wife also argues that the evidence does not support the finding that Husband's appraiser performed a "windshield" appraisal when he conducted his initial appraisal in December 2003. Wife cites the following exchange during redirect examination of Todd:

> Q The first appraisal you did in 2003, would that fall under windshield appraisal at the time?
>
> A Any appraisal I have done, I've taken pictures of, so I would say, no.

Transcript of May 23, 2005 Hearing at 53. Even assuming that the trial court erred by finding that the first appraisal conducted qualified as a windshield appraisal, Wife does not argue that this specific finding resulted in prejudice.

> recorded. Todd also stated unequivocally that any appraisal six (6) months or older is outdated, wholly unreliable and not accepted by lenders. This was another cogent reason Todd explained why the December 2003 appraisal cannot be used to reliably and accurately determine current fair market value of the subject real estate.
>
> The Husband also testified that he told the appraiser, Mr. Todd, after the initial 'windshield' and cursory inspection appraisal of $239,000.00 in December 2003 that his appraisal was 'awfully high for house trailers which were 30+ years old." [Daniel Boone's testimony under cross-examination by Wife's counsel][6]

Appellant's Appendix at 8. Wife argues that the evidence does not support a finding that the survey was recorded. The following exchange occurred on cross examination of Husband:

> Q All right. Now you heard Mr. Todd testify this morning about the survey being recorded. Do you have a recorded copy of that survey?
>
> A Yeah, I matter of fact when I first found out how it was actually mapped out, I went down to Mr. Stine's house and Mr. Stine gave me a copy of it, and that was before [Wife] ever paid him for that. That was the reason it was never recorded back in August or September of 2002 when he actually done it, because he'd never got paid for it. It was never recorded until sometime in 2003 before it was ever recorded.

Transcript of May 23, 2005 Hearing at 124. Considering only the evidence most favorable to the trial court's disposition of the marital property, we conclude that the evidence supports the finding that the survey was recorded.

2. Final Value of Real Estate

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[6] Bracketed text appears in original.

Wife argues that "[t]he division of the property in the Decree appears to find $111,985 as the value." Appellant's Brief at 16. Todd appraised the property in December 2003, and estimated the fair market value to be $239,000. In December 2004, Todd appraised the property at $111,000. At the hearing, Todd indicated that the only thing that was not on the December 2004 report were the septic and well figures, which raised the value of the property to $136,785. The following exchange occurred on direct examination of Husband:

> Q What is your opinion of the nine acres and everything on it, the pole barn, the structures, the trailers as it sits today, May of 2005, your fair and realistic opinion?
>
> A My fair and realistic opinion of it is $11,985.00 [sic] is what Ray Todd appraised it for. The tax statements for 2004 stated 115,000 so that's pretty much in line I would say for the value.
>
> Q Was there a recent – a reassessment of property values done statewide?
>
> A The reassessment was $115,000.00, yes.
>
> Q And when was that done?
>
> A That was for 2004.
>
> Q Okay. And what else, if anything, what other factors, if any, entered into your opinion that you arrived at . . .
>
> A The trailer . . .
>
> Q . . . of its value?
>
> A The trailers are trash. They're junk. They're out- They're thirty years old. You couldn't even move one of them. You couldn't even move the Empire, the newest trailer there, a 1984 trailer into a

mobile home park because it's too old. They wouldn't allow it, so basically they're depreciated. They're gone. They need to be replaced.

Q Needs to be replaced. Okay. And you heard Ray Todd this morning say he made an adjustment since December of 2004?

A Yes.

Q He made an adjustment in his opinion, he added, I believe, and I could be off about $20,000.00 off this morning?

A I seen what Ray had on his paper, and instead of subtracting . . .

Q What do you mean subtracting?

A He added two wells and a septic system to the . . .

Q Did you have two wells and a septic to add?

A Yeah. He added two wells and a septic system at I [sic] it was $9500.00 each.

Q Were there – Do two additional wells and a septic system exist on the property?

A That, that's what he should have subtracted from the 111,000, but he added them to it.

Q Okay, so in your opinion, he made a mistake. You don't have two additional wells and a septic?

A No, there's not. There needs to be two more wells and septic system put on the lot, one for the house that burnt and one – as to the way the property is divided now, and one for the house that has the loan on it, and a septic system for that house that has a loan on it.

Transcript of May 23, 2005 Hearing at 94-96. Based on the record, we conclude that the evidence supports the trial court's findings of fact.

F. Wife's Income

1. Social Security Income

The trial court's order also stated, "[Wife] receives monthly income from Social Security of approximately $800 per month or $9,600.00 per year." Appellant's Appendix at 7. The following exchange occurred during direct examination of Husband:

> Q Can you tell the Court what kind of income and the sources of income your wife's been getting since you've been separated?
>
> A Disability, child support.
>
> Q Let's talk about disability. From what source?
>
> A From a government disability check from IPC.
>
> Q Okay. Is that social security disability?
>
> A I think that's what it's called. Yes.
>
> Q And how much is that each month?
>
> A Approximately 700 to $800.00 a month.

Transcript of May 23, 2005 Hearing at 60. Considering only the evidence most favorable to the trial court's disposition of the marital property, we conclude that the evidence supports the finding that Wife received social security income of $800 per month. Accordingly, we cannot say that this finding is clearly erroneous.

2. Rental Income

The trial court's order stated, "[Wife] has also been collecting all the rental income in excess of $9,000 per year or at least $21,000.00 from the parties' rental income

properties since the parties' separation three (3) years ago." Appellant's Appendix at 7. The trial court's order also stated that Wife "shall also keep the approximate $21,000.00 income derived in the past from the rental properties on the real estate." Id. at 18. The trial court's order also included $10,800 as a cost to the Husband for "[l]oss of rent on trailer home Wife's adult daughter, Jessica Guerrero, has lived in since 2002." Id. at 25.

Wife argues that the evidence does not support these findings and conclusions. Husband argues that Wife "collected and dissipated $1,000 to $1,400 per month from the rental homes on the 9 acres since the parties' separation 2002 [sic]." Appellee's Brief at 18. Husband relies on the following exchange, which occurred during the direct examination of Husband:

> Q All right. Now, you've listed also rental income your wife's been receiving since the date of separation, right?
>
> A Yes.
>
> Q And approximately how much rental income has she been receiving?
>
> A Possibly if she had everything rented, she'd possibly make anything from 1,000 to $1,400.00 a month.
>
> Q Okay. And that would figure out to be how much a year then, 12,000 or more each year?
>
> A Approximately 7,000 at that date. That was in 2004.

Transcript of May 23, 2005 Hearing at 60-61. We cannot say that this exchange supports the finding that Wife had been collecting rent.

The record reveals the following exchange:

Q Do you have any rental income?

A There is some income coming in off the rentals, but . . .

Q Jessie doesn't pay rent for the house she's in, does she?

A When she has some money, she does pay rent.

Q Okay. But that's not regular.

A No, that is not regular.

Q Do you have any other persons living in and paying rent on any of the other houses located on this property?

A In the three bedroom I have Scott. He pays $375.00 a month. Okay?

Q Mhmmm.

A And then.

Q And that's the money that's used to pay the mortgage?

A To pay the mortgage, yes. And then the two bedroom house, that's rented for $375.00, but the man that they moved in and now he got- he switched jobs, so he hasn't paid this month's rent, and I supply the garbage pickup and I pay the garbage pickup.

Transcript of May 23, 2005 Hearing at 153.

Based on the record, we conclude that the evidence does not support the finding that Wife has been collecting all the rental income in excess of $9,000 per year or at least $21,000.00 from the parties' rental income properties since the parties' separation three years ago.

Wife also appears to argue that the trial court abused its discretion by including this rental income in Wife's assets. We agree. "[I]n a dissolution proceeding, the trial court is mandated, by statute and case law, to divide the assets and liabilities of the parties to the proceeding in which they have a vested present interest. Of course, the trial court may not divide assets which do not exist just as it may not divide liabilities which do not exist." In re Marriage of Lay, 512 N.E.2d 1120, 1123-1124 (Ind. Ct. App. 1987). Because we find that the evidence does not support the finding of at least $21,000 per year in rental income, we conclude that the trial court erred by awarding Wife $21,000 in rental income and assigning a cost to Husband of $10,800.

G. Wife Reported Husband's Criminal Activity

The trial court's order stated, in pertinent part:

> 4. . . . . The Husband has been unable to regain lost corporate business customers such as White County REMC and Camden Telephone Company after the Wife secretly informed on him bringing about the Husband's arrest in April 2002.
>
> * * * * *
>
> 22. Ind. Code § 31-15-7-5 also provides:
>
> Presumption for equal division of marital property; rebuttal
>
> Sec. 5. The court shall presume that an equal division of the marital property between the parties is just and reasonable. However, this presumption may be rebutted by a party who presents relevant evidence, including evidence concerning the following factors, that an equal division would not be just and reasonable:
>
> * * * * *

> (4) ***The conduct of the parties during the marriage as related to the disposition or dissipation of their propert*[*y*]**
>
> * * * * *
>
> [**Emphasis added**][7]
>
> In regard to the above statutory factors affecting a just and reasonable division, the Court finds and takes into account the Wife's wrongful and fraudulent dissipation of various monies and property, including approximately $20,000.00 wrongfully taken by the Wife from the Husband's trenching business in the year 2001, during the course of the parties' marriage. The Court further finds that the Wife's wrongful, bad faith and fraudulent conduct during the marriage played a material role in helping to cause a collapse of the Husband's trenching business and loss of large corporate business customers including, but not limited to, loss of corporate customers White County REMC, Camden Telephone Company and Carroll County REMC.

Appellant's Appendix at 6, 17.

Wife appears to argue that the trial court erred by considering the Wife's conduct of turning in the Husband with regard to the collapse of Husband's business.[8] Wife argues that "[w]hatever dissipation in value of the Husband's business interest may have occurred as a result of his criminal arrest and conviction cannot logically be attributed to

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[7] Bracketed text appears in original.

[8] Wife also argues that the evidence does not support the finding that she turned him in. However, Wife admits that "Husband presented hearsay testimony that the Wife turned him in." Appellant's Brief at 19. Thus, considering the evidence most favorable to the trial court's disposition, we cannot say that the evidence does not support the finding that Wife reported Husband's criminal activity.

Wife also argues that the evidence does not support the finding that Husband lost Carroll County REMC as a customer. We agree. Husband testified that "[Wife] took care of 181 or $82,000.00 of it through corporate checks which was White County REMC which I don't have as a customer any more, Camden Telephone, which I don't have as a customer any more, and the only one I still do have is Carroll County REMC." Transcript of May 23, 2005 Hearing at 115. However, Wife fails to argue that she

[Wife]."[9] Appellant's Brief at 19. We agree. To the extent that the trial court relied on Wife's reporting of Husband's criminal activity as conduct of the parties during the marriage as related to the disposition or dissipation of their property, we find that the trial court abused its discretion.

"Waste and misuse are the hallmarks of dissipation." Pitman v. Pitman, 721 N.E.2d 260, 264 (Ind. Ct. App. 1999), trans. denied (citing In re Coyle, 671 N.E.2d 938, 942 (Ind. Ct. App. 1996). When a party dissipates a marital estate, there is usually use or diminution of the estate for purposes unrelated to the marriage and the use is not generally for the purpose of meeting routine financial obligations. Id. (citing Coyle, 671 N.E.2d at 942). Factors to consider in analyzing whether dissipation of marital assets has occurred include:

1) whether the expenditure benefited the marital enterprise or was made for a purpose entirely unrelated to the marriage;
2) whether the transaction was remote in time and effect or occurred just prior to the filing of a divorce petition;
3) whether the expenditure was excessive or de minimis; and
4) whether the dissipating party had the intent to hide, deplete or divert the marital asset.

Id.

Wife's reporting of Husband's criminal activity was neither an expenditure nor a transaction. Thus, the factors set out for consideration in Pitman do not seem to apply.

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suffered any prejudice from this error.

[9] While Husband argues, on appeal, that there was evidence of Wife's fraud and dissipation of

Further, Wife's reporting of Husband's criminal activity is dissimilar to traditional examples of potential dissipation. See Stutz v. Stutz, 556 N.E.2d 1346, 1349-50 (Ind. Ct. App. 1990) (wife's disposing of marital assets at phenomenal rate without regard to consequences of her actions justified deviation from equal division of property); Planert v. Planert, 478 N.E.2d 1251, 1253-54 (Ind. Ct. App. 1985) (husband's drinking problem which was major contributing factor to failure of business justified unequal division of marital estate). Thus, we find that the trial court abused its discretion to the extent that it relied on Wife's reporting of Husband's criminal activity as conduct of the parties during the marriage as related to the disposition or dissipation of the marital property.

H. Wife Stole $20,000

The trial court's order stated:

> 4. . . . . Furthermore, [Wife] while acting as the Husband's financial business manager and bookkeeper wrongfully diverted and took approximately $20,000 from the Husband's trenching/digging business during 2001 instead of making the estimated federal and state income tax payments. The Husband testified that the Wife had received $81,000.00 in corporate customers' payment checks in 2001 and that the Wife took at least $20,000.00 of said monies instead of paying the estimated tax payments as she had led him to believe she would do.
>
> * * * * *
>
> 6. The Wife did not make the estimated tax payments in 2001 despite her taking in $81,000.00 in corporate customers' payment checks and, in addition, she did something she had never done

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marital assets, Husband does not specifically address Wife's argument that the trial court erred when it considered her conduct and its effect on the collapse of Husband's business.

> before during their 11 years of marriage. Specifically, she told the accountant Mr. Holzhausen that she wanted to file 'married but separate' returns and the accountant prepared her 2001 tax returns, federal and state, just the way she wanted them and also her husband Daniel's. This was done by the Wife without the Husband's knowledge and consent. Daniel's federal tax liability on his 'married but filing separate' federal tax return came out in excess of $15,254.00 for 2001 and $1,801.00 owing on the 2001 State income tax return (see 2001 'married but separate' federal income tax return and also the 2001 State of Indiana tax return admitted into evidence as Husband's Exhibit '5'). She then admitted that she only had to pay $51 for herself filing married but separate tax returns.
>
> The only reasonable inference to be drawn from the preponderance of the evidence is what [Husband] testified to and that is the Wife wrongfully took and misappropriated for herself approximately $20,000.00 from the Husband's trenching business income receipts in 2001 and did not make the estimated tax payments, federal and state, as her Husband Daniel had trusted her to do as bookkeeper and financial manager for the business.

Appellant's Appendix at 7-8. Wife argues that the evidence does not support the finding that she wrongfully divested and took $20,000 in marital assets. However, Wife admits that the trial court "may have based this finding on the Husband's testimony that he thought he gave the Wife enough money out of his 2001 income to pay expenses, taxes, and family bills, and there was a $20,000 tax bill left unpaid." Appellant's Brief at 20. Further, the following exchange occurred during the direct examination of Husband:

> Q And to your knowledge, what did [Wife] do with the estimated tax payment money . . .
>
> A She evidently . . .
>
> Q . . . of the business for 2001?
>
> A She evidently put it in her pocket.

Transcript of May 23, 2005 Hearing at 85. The following exchange occurred during cross examination of Husband:

> Q Okay. You've alleged that [Wife] has, in effect, taken $20,000.00 of business income from 2001 and apparently done something with it, is that true? Is that what you're claiming?
>
> A I don't know what she done with the money. I have no idea. I know it didn't pay the taxes and it should have. There was more than enough to pay them.

Transcript of May 23, 2005 Hearing at 134. Based on the record, we cannot say that this finding is clearly erroneous.[10]

I. Wife Requested Separate Returns

The trial court's order stated, "Specifically, [Wife] told the accountant Mr. Holzhausen that she wanted to file 'married but separate' returns and the accountant prepared her 2001 tax returns, federal and state, just the way she wanted them and also her husband Daniel's." Appellant's Appendix at 8. Wife argues that the evidence does not support this finding. Specifically, Wife argues that "[n]either the Wife nor the accountant testified that this occurred." Appellant's Brief at 21.

The record reveals that Husband testified, "[Wife]'s been getting money out of me for years going past that I knew anything about, I mean, and she proved that in 2001

[10] Wife argued that the trial court abused its discretion by concluding that "Wife shall keep the $20,000.00 she took from the trenching business in 2001." Appellant's Appendix at 23. Wife appears to argue that the trial court abused its discretion because the $20,000 did not exist. Because we find that the evidence supports the finding that she took $20,000, we conclude that the trial court did not abuse its discretion.

when she, she filed separately after ten years of filing, filing jointly on our taxes." Based on the record, we cannot say that the finding is clearly erroneous.

J. Wife Devised a "Scheme"

The trial court's order stated, "The Wife's devised scheme, actions and conduct to wrongfully dissipate monies and properties for herself amount to no less than Constructive Fraud perpetrated upon her Husband." Appellant's Appendix at 9. Wife argues that the evidence does not support the finding of a scheme. Husband argues that "[t]here was abundant testimony about the Wife's fraudulent scheme." Appellee's Brief at 16. Husband cites his testimony regarding the $20,000 and his following testimony:

> She's, she's been getting money out of me for years going past that I knew anything about, I mean, and she proved that in 2001 when she, she filed separately after ten years of filing, filing jointly on our taxes. And I went back through and checked out how she – how much money she'd actually paid on 2001, and $3900.00 out of 15,000 is just not very much money, especially when you've got $24,000.00 that was laying there that should have been taken out of the corporate checks at 30 per cent of each one of them, which I don't know. She said she took 30 per cent out. She insisted on that, and she really wanted to take 35 per cent out. Now I don't know whether she took 30 per cent out or 35 per cent.

Transcript of May 23, 2005 Hearing at 129. Again, we cannot say that this finding is clearly erroneous.

K. "Finagled" a Quitclaim Deed

The trial court's order stated:

> After the Wife finagled a Quit Claim Deed from the Husband on July 31, 2002 promising to hold the real estate 'in trust' for the Husband, the Wife had him sign a new mortgage and mortgage note for $68,800.00 with ABN Amro Mortgage Company on August 12,

> 2002 on the house with two (2) adjacent tracts located at 4906 N. State Road 25. . . . The proceeds of the new $68,800.00 mortgage loan were used to pay off the existing mortgage balance held by Bright National Bank in the amount of $61,000.00, and the Wife retained $7,800.00 in excess cash proceeds based on the evidence in the record. . . . Said mortgage with ABN Amro also required the parties to pay for and maintain fire and extended hazard insurance on the house and the parties did by a policy of insurance issued to them by Meridian Security Insurance. . . .

Appellant's Appendix at 11. Wife argues that the trial court's finding that she "finagled" a quitclaim deed is "unsupported by the evidence and inappropriately argumentative." Appellant's Brief at 22. The record reveals the following exchange on direct examination of Husband:

> Q Okay. And did there come a time when there was some discussion between you and [Wife] about the real estate you both owned, the nine acres?
>
> A Yes, there was.
>
> Q And when was that? When did that happen?
>
> A In July of 2002.
>
> Q Okay. And how did that discussion with [Wife] come about?
>
> A Because of seizure of the property, possibility of that, and she had a paper drawn up, quitclaim deed drawn up by Mr. Roe, and brought it to me and asked me to sign the paper so that she could hold it in trust for me, that she would never take my property.
>
> Q Now stop right there, [Husband]. Let me show you what's been marked for identification as Husband's Exhibit 3. Is that a true and correct copy of the Quitclaim Deed dated July 31, 2002, that you signed?
>
> A Yes, sir.

Q And did you understand at the time this was deeding your interest in the nine acres of real estate that you had owned with [Wife] to [Wife]?

A Yes. It, It, it was to be held-It was-The only reason I signed it was because I was under duress and stress and she promised that she would not sell the property and she would hold it in trust for me.

Transcript of May 23, 2005 Hearing at 67. The following exchange occurred on cross examination of Husband:

Q The deed was transferred from joint names into [Wife]'s name sometime in June or July of 2002, is that right?

A July 31st.

Q July 31st was when it was recorded.

A Of 2002.

Q But you were talking about it before that July 31st date, is that right?

A She had said something about filing a quitclaim deed, yeah, but then it didn't come up.

Q Okay. Then all of a sudden on July 31 you did it?

A Because – Because of my drug charges, not knowing what I was going to be charged with. I was looking at six years in prison.

Q Okay.

A And I done that in, in trust and she, she told me that I won't take your father's property. I wouldn't try to. I wouldn't sell it or nothing. I'd keep it for you. That's the reason I signed the quitclaim deed.

Id. at 118. Based on the record, we cannot say that this finding is clearly erroneous.

L. Financial Manager

Wife also argues that the evidence does not support the finding that she was Husband's "financial manager." Appellant's Brief at 24. Wife argues that while she "testified that she organized the business receipts, took the receipts to the accountant, made deposits at the bank and made any tax related payments as directed by the accountant," she testified that "Husband was the only authorized signer on the account," and that "[t]hese facts fail to establish that the Wife was a financial manager." Appellant's Brief at 24. Wife fails to argue how this finding prejudiced her.

M. Shooting

Wife also argues that the evidence before the trial court could not have supported a footnote in Paragraph 24 of the trial court's order. Paragraph 24 states:

> 24. The Wife's testimony and proposal at the final hearing that the Husband should only receive in division of the parties' real estate the following: 1) the vacant .79 acre tract where the parties' house at 4906 N. State Road 25 burned down (Tract 'B' on old survey), 2) the 2.21 acres of vacant and non-buildable flood plain tract designated as Tract 'G', and 3) the old trashy 35 year old trailer home on Tract K consisting of 1.35 acres which the Wife tried to wrongfully sell through Bonham Realty for $15,000.00. The Wife's proposal is wholly unjust and unreasonable. The Wife's proposed division is further unreasonable and unjust because it would not even give the Husband Tract H on the old plat of survey which contains the pole barn the Husband needs for storage of his trenching machinery, equipment and tools. Furthermore, the Wife's proposal is patently unjust and unreasonable because she wants to retain all the rental homes and house trailers for herself, including the pole barn.

Appellant's Appendix at 18-19. The footnote following Paragraph 24 states:

> The Court is persuaded that the 9 acres of real estate cannot be divided or split up between the Husband and Wife, especially after the Wife's adult daughter, Jessica D. Guerrero, attempted to murder the Husband and his helper on June 4, 2005 by repeatedly firing a semi-automatic handgun at them while they were lawfully inside the pole barn.

Id. at 19. Wife argues that the accusation of attempted murder against her daughter allegedly took place "after the date of the final hearing" and could not "possibly have been supported by the evidence at the trial." Appellant's Brief at 24. The trial court held a "final hearing" on May 23, 2005; however, the trial court also held a hearing under the same cause number on June 24, 2005. Transcript of June 24, 2005 Hearing at 1. At the June 24, 2005, hearing, Walters, Husband's friend, testified that Guerrero shot at Walters and Husband. After both of the hearings, the trial court entered its dissolution decree on September 30, 2005. Wife does not cite any authority or further develop her argument and has waived this argument. See Loomis, 764 N.E.2d at 668 (holding that party waived issue by failing to cite to authority and develop their argument).

N. Proceeds from Refinancing of the Mortgage

Wife argues that evidence does not support the following finding:

> The Wife shall receive the following as her sole and separate property and the Husband shall have no further interest therein.
>
> * * * * *
>
> G. The Wife shall keep the $7,800.00 in cash exceeds proceeds she obtained from a refinancing of mortgage with ABN Amro Mortgage Company in August 2002[.]

Appellant's Appendix at 23. Wife argues that the record is devoid of any evidence on this issue and that "[i]n any event, the proceeds certainly no longer exist." Appellant's Brief at 25.

The trial court's order states:

> The proceeds of the new $68,800.00 mortgage loan were used to pay off the existing mortgage balance held by Bright National Bank in the amount of $61,000.00, and the Wife retained $7,800.00 in excess cash proceeds based on the evidence in the record. [See Husband's Exhibit 14, page 3 of credit report from Trans Union dated 10/14/04][11]

Appellant's Appendix at 11. Husband's Exhibit 14 is Husband's credit report, which states in part:

| TRADES | | | | |
|---|---|---|---|---|
| SURNAME | SUBCODE | OPENED | HIGHCRED | TERMS |
| ACCOUNT # | | VERIFIED | CREDLIM | PASTDUE |
| ECOA | COLLATRL/LOANTYPE | CLSD/PD | BALANCE | REMARKS |
| | | * * * * * | | |
| ABN-AMRO | B 624P010 | 8/02 | $68.8K | 180M761 |
| 3300624829754 | | 9/04A | | 10.6K |
| P | FRD 720797990 | | $66.7K BURNT HOUSE | SUPPOSE TO BE GOIN[12] |
| | | * * * * * | | |
| BRIGHT NTLBK | B 807R002 | 9/99 | $61.3K | 240M667 |
| 452694310193 | | 8/02A | | $0 |

[11] Bracketed text appears in original.

[12] "SUPPOSE TO BE BURNT HOUSE GOIN" is a handwritten notation.

| | | | | |
|---|---|---|---|---|
| C | 4930 4906 N SR 25 | 8/02C | $0 ?[13] | CLOSED ARRESTED 4-30-02[14] |

Husband's Exhibit 14 at 2-3. Based on Husband's Exhibit 14, we conclude that the trial court's finding is supported by this exhibit and is not clearly erroneous.

In summary, we conclude that the trial court clearly erred: (1) in calculating Wife's rental income; and (2) by relying on Wife's reporting of Husband's criminal activity as conduct related to the disposition or dissipation of their property. Accordingly, we reverse and remand the property division with instructions that the trial court enter findings consistent with this opinion and modify its judgment accordingly.

II.

The next issue is whether the trial court erred by ordering Wife to vacate the property by July 15, 2005. Wife argues that the trial court erred by entering the following finding:

> 25.
>
> * * * * *
>
> The Wife has until July 15, 2005 to fully vacate the mobile home she is now occupying with her two grandchildren at 4938 N. State Road 25 . . . .

[13] "?" is a handwritten notation.

[14] "ARRESTED 4-30-02" is a handwritten notation.

Appellant's Appendix at 19. Specifically, Wife argues that the trial court's order instructing her to vacate the premises was "factually and chronologically impossible to comply with" because the trial court's order was issued on September 30, 2005. Appellant's Brief at 24. We note that the trial court's order also stated:

> 29. [Wife] is given until November 15, 2005 to fully vacate the trailer house at 4938 N. State Road 24 she is now occupying with her two grandchildren and completely vacate the property.

Appellant's Appendix at 25. We remand for clarification.

III.

The next issue is whether the trial court erred by finding that Wife possessed Husband's diamond ring and tools. Wife also argues that the evidence does not support the following finding:

> 25. The Court now makes a just and reasonable division of the marital property pursuant to Indiana Code 31-15-7-4 as follows:
>
> * * * * *
>
> g. Wife shall immediately return to the Husband his late father's valuable multi-carat diamond ring which Wife still has and Husband's other 'Boone family' heirlooms, including the diamond ring, 16 gauge shotgun, Luma 22 semi-automatic pistol. [Wife's Exhibits H & I letters dated February 6, 2004 admitting that Wife has Husband's late father's valuable diamond ring and Husband's valuable tools and equipment][15]

[15] Bracketed text appears in original.

Appellant's Appendix at 19-20. Specifically, Wife argues her attorney's letters do not support the finding that she admitted having possession of these items.[16]

Wife's Exhibit H is a letter from Wife's attorney to Husband's attorney and states in part:

> This is to follow up my e-mail message to you yesterday concerning our proposals. My client would agree that your client receive many of the items he requested in his proposal, namely: items numbered 2 (heater), 3 (tools), 5 (various vehicles), 6 (Safari work van), 7 (boat

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[16] Wife also argues that "[a]s evidence of negotiation, the Court should not have considered [Exhibits H and I] anyway. (Rule of Evidence 408)." Appellant's Brief at 25. We note that Wife introduced Exhibits H and I. Further, the following exchange occurred between Wife's attorney and Husband:

> Q . . . . And [Exhibits H and I] contain the statements that you claim are statements on my behalf that [Wife] has your ring?
>
> A Yes, and tools and other items.
>
> Q Okay.
>
> * * * * *
>
> Q You understand those to be settlement proposals?
>
> A Yes
>
> [Husband's Attorney]: Yes, for that purpose H and I, we would have no objection.
>
> [Wife's Attorney]: I would offer H and I and let the letters speak for themselves, Judge.

Transcript of May 23, 2005 Hearing at 141-142. Because Wife introduced Exhibits H and I and did not object to the Husband's reliance upon them, Wife has waived this argument on appeal. See In re Guardianship of Hickman, 805 N.E.2d 808, 822 (Ind. Ct. App. 2004) ("The failure to make a contemporaneous objection to the admission of evidence at trial, so as to provide the trial court an opportunity to make a final ruling on the matter in the context in which the evidence is introduced, results in waiver of the error on appeal."), trans. denied.

> motor, and trailer), 8 (but not the box trailer and some of Linda's "stuff", such cast iron items, towels, etc.), 9 (husband's business equipment), 14 (the burned down house site), 16 (the mobile home and real estate at the Point where Daniel lives), 17 (father's diamond ring), 18 (safe deposit box and contents), and 21 (property in his mobile home).

Wife's Exhibit H. Wife's Exhibit I states, in part:

> [A]fter talking with my client, I think she would be willing to do either of the following options as a full and complete settlement of all issues between the parties:
>
> Option 1: . . . .
>
> Option 2. [Husband] would be entitled to receive all of his business equipment, vehicles, and tools, including but not limited to the items listed in paragraphs 2, 3, 5, 6, and 9 of your e-mailed proposal, the uni-loader skidster, the vermier trencher and trailer, the ditch witch, the laser transit, the air compressor, the boring generator and trailer, the reel carrier, and the reel trailer. . . . The husband would receive his diamond ring, personal jewelry, lock box contents, and heirlooms. . . .

Wife's Exhibit I. The following exchange occurred during cross examination of Husband:

> Q . . . . And [Exhibits H and I] contain the statements that you claim are statements on my behalf that [Wife] has your ring?
>
> A Yes, and tools and other items.

Transcript of May 23, 2005 Hearing at 141-142. Based on Wife's Exhibits H and I, we conclude that the trial court did not clearly err by finding that Wife admitted that she possessed Husband's valuable tools, equipment, and ring.[17]

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[17] Wife argues that "the large number of factually unsupported findings collectively contributed to

IV.

The next issue is whether the trial court abused its discretion by ordering Wife's daughter to vacate the property. Wife argues that the trial court exceeded its jurisdiction when it ordered that "The Wife's adult daughter, Jessica Guerrero, shall immediately vacate the 1970 Holly Park mobile home near the pole barn commonly known as 4922 N. State Road 25 without damage and/or waste, and not take the Sears Kenmore gas range and/or refrigerator." Appellant's Appendix at 25. Wife's argument is that "Jessica Guerrero is not a party to this dissolution. The Court acquired no jurisdiction over her and cannot order her to vacate the premises." Appellant's Brief at 29. Wife argues that Guerrero was "not a party, nor was she ever made a party, to these dissolution of marriage proceedings." Appellant's Reply Brief at 13.

We have previously held that "[i]t is axiomatic that a divorce decree does not affect the rights of nonparties." Sovern v. Sovern, 535 N.E.2d 563, 566 (Ind. Ct. App. 1989), reh'g denied. Further, "every person is entitled to an opportunity to be heard in a court of law upon a question involving his or her rights or interests before he or she is affected by any judicial decision on the question." Id. Because Guerrero was not a party to the dissolution decree, we conclude that the divorce decree cannot affect her rights to

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the adverse property award, and are indicative of the Court's failure to divide the marital property in a fair, just and reasonable manner." Appellant's Brief at 25. We cannot say that the trial court's errors collectively contributed to an adverse property award any further than we have already noted.

remain on the property.[18] See In re Marriage of Dall, 681 N.E.2d 718, 723 (Ind. Ct. App. 1997) (holding that "[a] party to a divorce who claims that the marital estate includes an equitable interest in real property titled in a nonparty should move to join the nonparty and to have the issue determined within the divorce proceedings").

V.

The next issue is whether the trial court erred by ordering that Wife's maiden name be restored. Wife argues that the court erred by restoring her maiden name because she did not request that her maiden name be restored. Ind. Code § 31-15-2-18 (2004) provides:

> A woman who desires the restoration of her maiden or previous married name must set out the name she desires to be restored to her in her petition for dissolution as part of the relief sought. The court shall grant the name change upon entering the decree of dissolution.

Husband concedes that he requested that Wife's maiden name be restored in his proposed pretrial order submission and assumed that Wife wanted her maiden name restored. We reverse and remand for the trial court to modify its dissolution decree to provide that Wife keeps the name of Boone. Cf. Maloblocki v. Maloblocki, 646 N.E.2d 358, 364 (Ind. Ct. App. 1995) (holding that trial court did not err by not restoring wife's maiden name because wife failed to properly request the trial court to change her name but because wife made it evident now that she desires to have her maiden name restored we

[18] We note that because the trial court awarded the property to the Husband, he may seek to evict Guerrero from the property.

remanded to the trial court and directed the trial court to modify its dissolution decree to provide that wife's name be changed).

In summary, we conclude that the trial court did not clearly err: (1) in dividing personal property after the fire; (2) by ordering that the insurance proceeds be used to pay Husband's 2001 tax liabilities; (3) by failing to credit Wife for her efforts in negotiating with the insurance company; (4) by finding that Wife held title to the real estate and other property in a constructive trust; (5) in valuing the real estate; (6) in calculating Wife's social security income; (7) by finding that Wife stole $20,000; (8) by finding that Wife requested separate returns; (9) by finding that Wife engaged in a scheme; (10) by finding that Wife finagled a quitclaim deed; (11) by finding that Wife was a financial manager; (12) by considering the circumstances surrounding the shooting; (13) by finding that Wife received $7,800 in cash proceeds from refinancing the mortgage; or (14) by finding that Wife admitted that she possessed Husband's valuable tools, equipment, and ring. We reverse and remand the property division because the trial court clearly erred: (1) in calculating Wife's rental income; and (2) by relying on Wife's reporting of Husband's criminal activity as conduct related to the disposition or dissipation of their property. We also reverse and remand for the trial court to modify the decree to reflect that it does not affect Guerrero's right to remain on the property and to provide that Wife keeps the name of Boone. We remand for clarification of the date that Wife must vacate the property.

For the foregoing reasons, we affirm in part, reverse in part, and remand for proceedings consistent with this opinion.

Affirmed in part, reversed in part, and remanded.

NAJAM, J. and ROBB, J. concur